

# Georgia Department of Human Resources Division of Aging Services

## Section 90

## State Agency Operations, Policies and Procedures

### §93 Compliance with Contractor Responsibilities, Rewards and Sanctions

July 2003

#### §93.1 Scope and Background

This provides policies and procedures to be used by the Division of Aging Services in assessing compliance by Area Agencies on Aging, and their subcontractors, with contract requirements and responsibilities and developing appropriate performance-based rewards or sanctions, relative to compliance status. The Area Agencies shall convey the applicability of these policies to their subcontractors through appropriate contract language. To the extent feasible, and subject to the availability of funds and other resources, the Division will reward those area agencies which the Division finds have demonstrated exceptional performance. Likewise, should there be findings of non-compliance with the terms of a contract which governs the use of monies appropriated under that contract, the Division may take such actions, described in this section, as may be legally available and appropriate to the circumstances. This section outlines the rewards available for compliance with a contract and the potential sanctions which can be levied for non-compliance with contract terms and conditions.

#### §93.2 Definitions

Definitions for terms used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(a) Levels of Sanctions include but are not limited to:

- (1) Level One Sanction- The sanction that the Division may impose as a response to a contractual breach and/or failure to comply with Division policies and procedures and specific state and federal requirements.
- (2) Level Two Sanction- The sanction that the Division may impose as a response to a severe problem and the potential negative impact that such a problem may have on a contractor agency's region or on the State.
- (3) Level Three Sanction - The sanction that the Division may impose with a severe and/or continued failure to comply with contractual requirements, Division policies and procedures, and/or state and/or federal laws may affect service delivery and/or contractor agency financial stability.
- (4) Level Four Sanction - The sanction that the Division may impose where a severe and/or continued failure to comply with contractual requirements, Division policies and procedures, and/or state and/or federal laws continue to go uncorrected.

- (b) Acceptable corrective action plan -Identification of actions to be taken, including a time line, that are acceptable to the Division to correct and identified issue of contractual or legal non-compliance.
- (c) Administrative payments- Payments for general administration of an Area Agency on Aging, including any indirect cost recovery.
- (d) Certified- When used in conjunction with performance measure testing, describes having obtained acceptable results, within parameters established by the Division, for data tested.
- (e) Discretionary funds- Any funds issued by the Division that are not awarded based on a general funding formula or not awarded to all Area Agencies by the Division.
- (f) Extension- An approved request, submitted to the Division on or before the original due date, to submit required reports or other required information, later than the established due date, and granted at the discretion of the Division for good cause shown.

### §93.3 Preventive Maintenance

Preventive maintenance activities or approaches, developed to ensure achievement of desired program outcomes and provide fiscal accountability, include technical assistance, procedural issuances and policy manual issuances, timely and effective program and fiscal monitoring, performance measure testing, and quality reviews.

- (a) Technical assistance is performance-driven and outcome-based. Specified Division staff with appropriate programmatic, technical and/or administrative expertise will provide technical assistance for administrative, programmatic and fiscal issues. Training is included as a preventive maintenance approach, to the extent that resources are available to arrange for and provide such training.
- (b) Procedural issuances and manual issuances provide clarification and interpretation of federal and state requirements and are performance-driven and outcome-based. They may relate to both programmatic and fiscal issues.
- (c) Program and Fiscal Monitoring assistance may include site visits, desk reviews and analysis of both financial and program outcomes to help identify potential weaknesses, before such weaknesses result in sub-standard performance or questioned costs. Monitoring may result in recommendations that provide practical solutions that can be used to take immediate corrective action.

- (d) Performance measure testing is conducted to determine the accuracy (including completeness) of data submitted to the Division and to assess the quality of the controls in place to ensure the consistency of accurate and well-documented data.
- (e) Quality reviews include the routine evaluation of essential quality indicators and certification systems and will be enhanced with timely and relevant training and technical assistance to help develop and maintain the knowledge, skills and abilities required across all program lines.

#### §93.4 Contractor Responsibilities

Contractors<sup>1</sup> are responsible for compliance with the terms of the contract and will:

- (a) comply, as applicable, with all governing documents;
- (b) comply with the requirements of approved contracts or plans;
- (c) meet the administrative and service requirements established by the Department/Division, including, but not limited to, all budget documents and required reporting in a timely, complete and accurate manner, consistent with §104, Area Agency Administration and Operations, and §106, Area Agency Fiscal Responsibilities.
- (d) respond to requests by the Division for specific correction as a result of:
  - (1) the area plan or area plan amendment review;
  - (2) program and fiscal reviews, monitoring and assessments;
  - (3) investigation and response to complaints; or
  - (4) erroneous or incomplete information on program performance or financial reports.
- (e) respond to or comply with corrective action plans as requested or required by the Division.

#### §93.5 Rewards

Rewards for exceptional performance will be determined by the Division or AAAs based on the results of periodic and annual monitoring and evaluation. Area Agencies are encouraged to work with the provider network to establish reward and recognition initiatives that are both meaningful and tangible. Exceptional performance is characterized by those activities which produce results which substantially exceed minimum requirements, and could be related to superior consumer satisfaction ratings, outstanding leadership in the community and state, highly effective stewardship of funds, highly effective advocacy efforts resulting in actions taken to benefit programs or clients, innovations leading to process improvements and

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<sup>1</sup> “Contractor” is used generally in this section to refer to both Area Agencies and their subcontractors. Area Agencies will substitute “the AAA” for “the Division” in applying these requirements to subcontractors.

improved results. Actual rewards are not limited to, but may include any one, or a combination of:

- (a) notification and publicizing of outstanding performance to the public in the Area Agency's region and to the governing board of the designated Regional Development Center or non-profit organization. This could include holding annual recognition events, giving "Best in Class" Awards for AAAs and providers, highlighting accomplishments in newsletters and annual reports;
- (b) providing discretionary funding awards for conferences, training events, or leadership workshops, including in-state and, *when appropriate*, out-of-state travel;
- (c) providing discretionary funding awards for the purchase of equipment, including upgrades to computer hardware and software;
- (d) reducing the frequency of monitoring and other review processes, as long as performance levels are maintained at the exceptional level;
- (e) provision by the AAA of a "loaned" employee to a provider with outstanding accomplishments for a period of time;
- (f) providing the opportunity to participate in policy and program development initiatives;
- (g) giving priority consideration for new projects, activities or funding.

## §93.6 Sanctions

The Division and/or AAAS may apply sanctions which can be both progressive and cumulative in nature and which *can* include, but are not limited to, the following:

### §93.6.1 Level One Sanctions

Level One Sanctions may result in one or more of the following actions:

- (a) requiring the development, submission and implementation of an acceptable corrective action plan to address identified weaknesses, contractual breaches, and/or non-compliance;
- (b) submission of additional and/or more detailed financial and/or performance reports;
- (c) designation as a high-risk contractor, requiring additional monitoring visits;
- (d) repayment of disallowed costs; and
- (e) requiring directed amendments to current area plans or subcontract proposals.

**§93.6.2 Level Two Sanctions<sup>2</sup>**

Level Two Sanctions may result in one or more of the following actions:

- (a) imposition of one or more Level One Sanctions;
- (b) restrictions on ability to draw down contractor/Area Agency administrative funds, including suspension or termination of area planning funding, with notice of such action to the agency director, the agency director's superior (if applicable), and the agency's board chairperson, or comparable agency official;
- (c) prohibition of participation in discretionary funds application process;
- (d) imposition of required technical assistance, and
- (e) requiring directed amendments to current area plans or subcontract proposals

**§93.6.3 Level Three Sanctions**

Level Three Sanctions may result in one or more of the following actions:

- (a) imposition of one or more Level One sanctions;
- (b) imposition of one or more Level Two sanctions;
- (c) prohibition or limitation of the provision of direct services by the Area Agency;
- (d) prohibition of or limitation on the use of specific service providers/vendors;
- (e) imposition of the requirement that reimbursement payments made to Area Agency/contractor for the remainder of the fiscal year shall only be made following submission of bills paid or other documentation to show that bills for which reimbursement is sought have been paid; and .
- (f) requiring directed amendments to current area plans or subcontract proposals

**§93.6.4 Level Four Sanctions**

Level Four Sanctions may result in one or more of the following actions:

- (a) imposition of one or more Level One sanctions;
- (b) imposition of one or more Level Two sanctions;
- (c) imposition of one or more Level Three sanctions;
- (d) requiring a directed amendment to the current area plan/proposal; and
- (e) withdrawal of designation and/or cancellation of the Area Agency or provider contract.

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<sup>2</sup> See Appendix 94-A for procedures for suspension and termination of Area Plan funding, which can, at the discretion of the Division, may be imposed at the Level II Sanction and above.

**§93.7 Administrative Violations**

Administrative violations shall result in disciplinary and/or corrective actions as specified in this section, unless the violation occurred as a result of an act of God or action by the Division/Department. The Division is responsible for documenting violations. Higher levels of administrative sanctions will be applied for non-compliance issues deemed most serious, and for continued non-compliance, including failure to take appropriate corrective action, for less serious issues.

**§93.8.1 Violations Subject to Level One Sanctions**

Violations which may result in the imposition of Level One sanctions include, but are not limited to, the following:

- (a) failure to satisfactorily resolve an identified contractual breach within specified timeframes.
- (b) failure to submit a required report by the due date or date of approved extension.
- (c) failure to submit required reports accurately and completely, if identified by the Department (not to exceed two instances in one fiscal year), and not corrected within five workdays following notification;
- (d) failure, on the third occurrence, to submit required reports accurately and completely, if identified by the Department, whether or not a violation notice was previously issued;
- (e) failure to submit timely an acceptable corrective action plan for findings of program and fiscal monitoring within forty-five (45) calendar days;
- (f) failure to conduct an appropriate audit review process for required provider audits;
- (g) failure to resolve deficiencies noted in an audit review within timeframes established by contract.

**§93.8.2 Violations Subject to Level Two Sanctions**

Violations which may result in the imposition of Level Two sanctions include, but are not limited to, the following:

- (a) failure to rectify any level one sanction within the timeframe established for corrective action;
- (b) failure to complete in a timely manner any corrective actions provided in any corrective action plan;
- (c) failure to submit in a timely manner a Single Audit, in accordance with OMB Circular A-133, to the Department;
- (d) failure to be certified as having had accurate data following performance measure testing;
- (e) failure to conduct on-site monitoring of providers as required;

- (f) failure to issue letters of findings within thirty (30) calendar days following on-site monitoring or quality assurance review (QAR) of service providers; and
- (g) failure to assure contractor's resolution of deficiencies found during service provider's monitoring/quality assurance review within the timeframes established in the corrective action plan.

#### **§93.8.3 Violations Subject to Level Three Sanctions**

Violations which may result in the imposition of Level Three sanctions include, but are not limited to, the following:

- (a) failure to rectify any Level One sanction within ninety (90) calendar days following the timeframe established for corrective action;
- (b) failure to rectify any Level Two sanction within the timeframe established for corrective action;
- (d) failure to appropriately act upon reported or identified threats to the health and safety of program participants, within established timeframes , as follows:
  - (1) immediately, or on the next business day, when an immediate threat to life and safety of participants is reported or identified;
  - (2) within seventy-two (72) work hours, when there is some risk to health or safety, which is considered not to be life threatening;
  - (3) within seven (7) work days for all other reports or risks identified.
- (d) failure to appropriately report and respond to allegations of abuse, neglect, and/or exploitation, and/or allegations of fraud or ethics code violations;<sup>3</sup>
- (e) failure to have tested data certified as accurate two times out of any four consecutive performance measure tests; and
- (f) occurrence of four or more Level One violations or three or more Level Two violations within the same fiscal year.

#### **§93.8.4 Violations Subject to Level Four Sanctions**

Violations which may result in the imposition of Level Four sanctions include, but are not limited to, the following:

- (a) failure to rectify any Level One sanction within 180 calendar days following the timeframe established for corrective action;

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<sup>3</sup> Refer to "Requirements for Non-Medicaid Home and Community Based Services" General and Individual Services requirements, regarding mandatory reporting of suspected abuse, neglect or exploitation of participants. Provider staff are considered to be mandated reporters as defined in O.C.G.A. 30-4, Protection of Disabled Adults and Elder Persons. AAAs which provide direct services, including case management, will be subject to mandated reporting.

- (b) failure to rectify any Level Two sanction within 90 calendar days following the timeframe established for corrective action; and
- (a) failure to rectify any Level Three sanction within the timeframe established for corrective action.

**§93.9 Notice of Pending Action**

The Division is responsible for providing adequate and timely notice of pending actions, including sanctions, according to the following guidelines.

- (a) The date of notice shall be the date the notice is sent to the contractor via facsimile transmission (FAX), if transmitted or recorded as delivered by 12:00 Noon on a regular business day. If transmitted after 12:00 Noon, the next business day will be considered the date of notice.
- (b) All notices of violations will be sent by the following methods:
  - (1) facsimile (FAX) transmission for all notices; and
  - (2) letter by postal mail for violations subject to a Level one and Level Two sanction or, for violations subject to a Level Three and Level Four sanction, by postal mail, return receipt requested, or by commercial delivery services with signature of receipt required.
- (c) All notices will be addressed to:
  - (1) the agency's/contractor's Executive Director or designated representative;
  - (2) the Director of the Area Agency on Aging; and
  - (3) the agency's/contractor's Board Chair or comparable agency official.

**§93.10. Fraud**

All allegations of fraud will be investigated by the Department or other agency(ies) with jurisdiction. Complaints will be referred to the appropriate agency for action. Since payments to contractors are made from both State and Federal funds, submission of false or fraudulent claims, statements, documents, or the concealment of a material fact may be prosecuted as a felony in either Federal or State Court.

- (a) The Department/Division will inform the agency/contractor of the exact nature of the complaint and may require the contractor to conduct its own internal investigation.

- (b) The Department will document its investigation's findings and conclusions and inform the contractor and the complainant of the results. If an investigation substantiates fraud, the Department will require the contractor to take corrective action and/or refer the complaint to the Georgia Attorney General's Office, the United States Attorney General's Office and other appropriate law enforcement agencies.

**§93.11 Ethics Code Violations.**

The Department/Division is bound by the Code of Ethics for Government Service and expects all contractors, including area agencies on aging and their sub-contractors to abide by the same. ( See Appendix 93-B) Violations of the Ethics Code requirements will be investigated by the Department and referred by the Department to the appropriate law enforcement agency. Ethics violations may result in criminal prosecution and may be pursued based on the provisions pertinent laws and regulations.

- (a) The Department will inform the contractor of the exact nature of the complaint and may require the contractor to conduct its own internal investigation.
- (b) The Department will document its investigation's findings and conclusions and inform the contractor and the complainant of the results. If an investigation indicates there is a substantiated situation in which there is a question of ethics code violations, the Department will require the contractor to take corrective action and/or refer the complaint to appropriate law enforcement agencies.

**§93.12 Abuse, Neglect, and Exploitation.**

Abuse, neglect, exploitation and other violations of client rights will be reported by the Department/Division to the appropriate authorities.<sup>4</sup>

**§93.13 Other Remedies**

The Department /Division may take and/or impose other remedies that are legally available based on the circumstances involved.

**Effective Date:**

July 2003

**Review Date:**

March, annually, or at any other such time as there are changes in laws or regulations which affect this policy.

**Approved:**

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**Maria Greene, Director, Division of Aging Services**

**Appendix 93-A**

**Procedures for Suspension or Termination of Area Plan Funding**

**93-A -1 Suspension of the area plan and funding.**

- (a) The Division may suspend temporarily state or federal assistance under an approved area plan, pending corrective action by the Area Agency or pending a decision by the Division to terminate the contract.
- (b) When conditions warrant, the Division may suspend area plan operations in whole or in part. Such conditions would result from the Area Agency's failure to comply with contract award stipulations, standards, or conditions.
- (c) To suspend area plan operations, the Division shall notify the Area Agency in writing of the action being taken, the reason for such action, and the conditions of the suspension. This notice shall be given at least thirty (30) days prior to the effective date of suspension and shall note the right of the Area Agency to appeal this decision, and the procedures to be followed for such an appeal.
- (d) The Division shall grant to any Area Agency whose plan has been suspended, in whole or in part, an opportunity for reconsideration of the decision.
- (e) The Division may, at its discretion, allow federal financial participation in necessary and proper costs that the Area Agency could not reasonably avoid during the period of suspension.
- (f) In suspending area plan operations, the Division shall determine the amount of unearned Title III funds the agency has on hand. The anticipated length of suspension, the extent of area plan operations suspended and the amount of fund balance on hand will determine whether the Division will require the agency to return the balance.
- (g) The Division may, at its discretion, reinstate the suspended area plan operation if it determines that conditions warrant such action.
- (h) Federal participation in reinstated area plan operations may resume immediately upon reinstatement, but not for any costs accrued for those area plan operations while they were suspended. The authority to obligate funds resumes upon reinstatement at the previously established matching ratio.
- (i) If the suspension of area plan operations continues for three (3) consecutive months in any budget year, federal funding of the area plan operations is automatically suspended.

**93-A-2 Termination of area plan funding**

- (a) The termination of funding means the cancellation or state or federal assistance, in whole or in part, under a contract at any time prior to the date of completion.
- (b) The Division may terminate state or federal support for an area plan prior to the end of an approved budget/fiscal year or project period if:
  - (1) The Area Agency violates the conditions under which the contract was approved;
  - (2) Program performance is inadequate; or
  - (3) Non-federal resources are not available.

**Appendix 93-B**

**Georgia Code of Ethics for Government Service**

**Georgia law includes a Code of Ethics for Government Service which provides as follows:**

Any person in government service should:

- I.** Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.
- II.** Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never by a party to their evasion.
- III.** Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.
- IV.** Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V.** Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
- VI.** Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- VII.** Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
- VIII.** Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
- IX.** Expose corruption wherever discovered.
- X.** Uphold these principles, ever conscious that public office is a public trust.

*Official Code of Georgia Annotated section 45-10-1.*